IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.894 OF 1988

The State of Maharashtra ...Appellant

vs.

Annaji Ganesh Kulkarni ...Respondent

Ms G.P.Mulkear, A.G.P. for State
Mr.S.M.Oak for the Respondent

CORAM: A.S.OKA,J.
DATE : FEBRUARY 5,2007.

ORAL JUDGMENT:

1. Submissions of the learned Advocates for the parties were heard on the last date. The challenge in the First Appeal is to the Judgment and Award dated 16th January 1987 passed by the Civil Judge (Senior Division) Sangli in a reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894). A notification under section 4 of the said Act of 1894 was issued on 1st January 1979. The Award was made on 30th April 1982 under section 11 of the said Act of 1894. By the impugned Judgment and Award, the learned Trial Judge granted enhancement in market value by holding that the market value of the acquired land was Rs.7200/- per hectare. The learned Judge also granted statutory benefits under the said Act of 1894 in favour of the Respondent.

2. The learned A.G.P. submitted that a notice under section 9(2) of the said Act of 1894 was duly served to the

Respondent-claimant but he did not file any claim. Her submission is that in view of section 25 (unamended) of the said Act of 1894, the Respondent was not entitled to claim enhancement in the compensation. The second submission is that the market value awarded is on the higher side. The learned Advocate for the Respondent submitted that notice allegedly served on the Respondent was not a proper notice giving time of 15 days as required by law. He submitted that the case is covered by the decision of this Court in case of Abdulla Kadar Husseinbhai Lakdawala vs. Special Land Acquisition Officer, Thane (1989 Mh.L.J. page 230). He submitted that in fact the market value fixed by the trial Court is on the lower side. He pointed out that the Respondent has filed a cross objection claiming market value at the rate of 10,000/- per hectare. He submitted that the cross objection deserves to be allowed.

3. I have considered the submissions. I will deal with the first submission of the learned A.G.P. as regards the effect of not filing a claim. I have perused the record. I have perused the Appendix VI along with its schedule forwarded by the Special Land Acquisition Officer to the Reference Court along with the Application under section 18 of the said Act of 1894. The schedule records that notice under section 9(3) (4) of the said Act of 1894 was served to the interested persons on 21st November 1979 and the date of enquiry was fixed on

27th November 1979. It records that on the date of enquiry, the Respondent remained absent and he did not file any claim. The Respondent-claimant in his cross examination admitted that he received notice under section 9 of the said Act of 1894. However, no suggestion was given in the cross examination as regards date of receipt of the notice. Thus, the date of service of notice will have to be taken as 21st November 1979 as mentioned in Appendix VI forwarded by the Special Land Acquisition Officer. It also records that the date of hearing was fixed on 27th November 1979. The said date was obviously for holding an enquiry as contemplated by section 11 of the said Act of 1894. There is nothing on record to show that the date of enquiry was extended or postponed to enable the Respondent to file a claim.

4. Section 9 of the said Act of 1894 reads thus :

"9. Notice to persons interested -

(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and

[registered under sections 28 and 29 of the Indian Post Office Act,1898 (6 of 1898)].

Sub section 2 of section contemplates that a public notice under sub section 1 of section 9 of the said Act of 1894 shall state particulars of the land under acquisition and shall require all persons interested in the land to appear personally at the time and the place mentioned therein and to state the nature of their respective interests in the land and the amount and the particulars of their claim of compensation. Sub section 2 provides that the time mentioned in the notice shall not be earlier than 15 days after the date of publication of notice. Sub section 3 contemplates that a notice containing all the details as provided under sub section 2 shall be served on the occupier and on all such persons who are known or believed to be interested therein. In the present case, notice was served on 21st November 1979 informing the Respondent that enquiry is fixed on 27th November 1979.

5. In view of the mandate to sub section 2 of section 9, the date of enquiry could not have been fixed within the period of 15 days from the date of publication of the notice. In this case, it is not the case of the Appellant that the date of publication of notice is different from the date on which the notice is served to the Respondent. No evidence has been

adduced by the Appellant to show that the public notice was published 15 days prior to 27th November 1979. Thus, the enquiry could not have been held on 27th November 1979. Sub section 2 of section 9 contemplates that the persons interested should get at least 15 days time to prepare their objections and to prepare their claims for compensation. In the present case, time of only six days was made available to the Respondent. The Special Land Acquisition Officer could have extended the time by postponing the date of enquiry. But there is nothing on record to show that the time was extended.

6. It will be necessary to refer to the decision of this Court in case of Abdulla Kadar Husseinbhai Lakdawala (supra). In the case before the learned Single Judge, notice under section 9 (3) of the said Act of 1894 was served upon the claimant on 26th July 1968. Enquiry was fixed on 9th August 1968. In paragraph 10 of its decision the learned Single Judge has held thus :

"10...Sub sections (1) and (2) of the said Section 9 set out above leave no room for doubt about this position. **The claimant is required to be informed not only the date of hearing but he is also required to be informed that he must make his claim for compensation within the time mentioned in the notice. If such intimation is not given to him then that**

intimation cannot partake the character of the notice contemplated by sub-sections (1) to (3) of section 9 of the Act."

(Emphasis supplied)

Paragraph 11 of the said decision reads thus :

"11. Moreover, what is somewhat significant in this case is that according to the Court the notice was served on 25-7-1968. I asked the learned Counsel as to from where the Court has got this date. For an answer I drew a blank. But if we turn to the statement, Exhibit 32, we find that the date mentioned is 26-7-1968. As mentioned above, the date itself is written in somewhat suspicious manner in that it involves a good deal of re-writing and overwriting. This overwriting is also not explained by the Talati. But even assuming that this notice was served upon the claimant on 26-7-1968 the point is that it is not a clear 15 days' notice. **I have emphasised about the significance of the words, "15 days' after the date of publication of the notice". It means that the notice must be served upon the claimant on such a date that a clear period of 15 days must elapse between the date of the service of the notice and the date of the hearing of the question of compensation.**

> In the instant case, if the notice was served upon on 26-7-1968, the first viz. 26-7-1968, shall have to be excluded while computing the period of 15 days. This means that the date of hearing is not after the period of 15th day. If that is the position, then even assuming that the notice was served upon the claimant on 26-7-1968 still there is no due compliance with the requirement of section 9 of the Land Acquisition Act."
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> (Emphasis supplied)

7. Turning back to the facts of the present case, it is obvious that there is no proper notice issued under sub section 2 of section 9 of the said Act of 1894. The object of service of notice is to enable the claimant to put up his claim for compensation on the date of enquiry. For that purpose, the statute requires that the time of 15 days is required to be granted. In the present case, there was no sufficient opportunity granted to the claimant to file the claim as time granted to him was only of six days. Thus, there is non compliance with sub section 2 of section 9 of the said Act of 1894. As a result, the Respondent had no sufficient time to submit his claim for compensation.

8. Therefore, I find that the decision of the learned Single Judge in the aforesaid case is very relevant and the bar

created by sub section 2 of section 25 of the said Act of 1894 will not apply to the present case. The bar in the sub section 2 of section 25 will apply only when the claimant fails to file or make a claim even after a valid and legal notice giving time of minimum fifteen days is served to him. Thus, the bar under sub section 2 of section 25 will not apply in the facts of the case.

9. So far as the quantum of compensation is concerned, there is hardly any dispute about the fact that the acquired land was characterised in the award as medium type jirayat land group-III. The Special Land Acquisition Officer fixed the market value at the rate of Rs.4,800/- per hectare. The Respondent relied upon the sale instance in the form of sale deeds at Exh.20,26 and 31. The sale deeds were in respect of the bagayat lands. Therefore, the learned trial Judge has rightly held that the sale instances were not comparable.

10. In absence of evidence of comparable sale instances, the learned trial Judge relied upon the Award made under section 11 of the said Act of 1894 and found that even according to the Award, the land ought to have been treated as a seasonal bagayat land. Therefore, instead of Rs.4800/- per hectare, he fixed the market value at the rate of Rs.7,200/- per Hector. While deciding the market value of the acquired land there is bound to be some element of guess work. The Respondent in his

evidence stated that there was a well having plenty of water. There was a stream passing nearby the well. He stated that apart from jirayat crops, bagayat crops like sugarcane, banana, chilly, cotton etc. were being taken by the acquired land. There is hardly any cross examination on the said aspect. Therefore, the learned Trial Judge was justified in treating the acquired land as a seasonable bagayat land and fixing the in market value at Rs.7,200/- per hectare.

11. So far as the cross objection is concerned, I find that none of the sale instances relied upon by the Respondent relate to the lands which can be characterised as a seasonal bagayat land. Thus, there is no evidence on record to make out a case for enhancement in market value above the amount of Rs.7,200/- per hectare. Hence, there is no merit in the Appeal as well as in the cross objection.

12. Hence, I pass the following order :

i) Appeal is dismissed with no order as to costs.

ii) The Appellant will pay costs of the Appeal to the Respondent.

iii) Cross Objection is dismissed with no order as to costs.

JUDGE